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Christopher Charles McCormick

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4264

22897 7590 11/28/2008

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EXAMINER

WRIGHT, PATRICIA KATHRYN

ART UNIT

PAPER NUMBER

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MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* CHRISTOPHER MCCORMICK and CHRISTOPHER  
WHISTON

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Application No. 09/668,688  
Technology Center 1700

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Mailed: November 28, 2008

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Before TOI JOHNSON *Review Paralegal*  
JOHNSON, *Review Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on November 21, 2008. A review of the application revealed that it is not ready for docketing as an appeal.

Application No. 09/668,688

Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S ANSWER,  
INCONSISTENCIES WITH THE BRIEF AND/OR  
LAST REJECTION OF RECORD

A review of the file finds inconsistencies between the Final Rejection mailed October 26, 2007, corresponding Status of Claims section in the Appeal Brief and the Examiner's Answer as set forth below.

Final Rejection

A review of the Final Rejection (Office Action Summary) mailed on October 26, 2007, finds the following status of the claims: claims cancelled: 1-19, 21 and 33 claims allowed: NONE, claims rejected: 20, 22-32 and 34-40, claims withdrawn: NONE. Specifically, a review of the Final Rejection finds that claim 40 is not discussed in any grounds of rejection.

Examiner's Answer

A review of the Examiner's Answer mailed on May 30, 2008, finds that the status of claim 40 as compared to the Final Rejection (Office Action Summary) and the Appeal Brief's Status of Claims is not consistent with the Grounds of Rejection to be Reviewed on Appeal and the Grounds of Rejection sections of the Answer. Specifically, a review of the Examiner's Answer finds that claim 40 is not discussed in any grounds of rejection.

Clarification of claim 40 is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) review the above inconsistencies to determine how to clarify the record;
- 2) vacate the Examiner's Answer mailed on May 30, 2008;
- 3) issue a corrected Examiner's Answer that clarifies the status of claim 40 and to correct other sections of the Answer as may be required;
- 4) include the necessary approval from the TC Director or designee in accordance with MPEP 1207.05, part (B) as may be required for any new grounds of rejection; and
- 5) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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